

STATE OF CALIFORNIA

Public Utilities Commission  
San Francisco

**M e m o r a n d u m**

**Date:** August 5, 2002

**To:** The Commission  
(Meeting of August 8, 2002)

**From:** Bill Julian  
Office of Governmental Affairs (OGA) — Sacramento

**Subject:** **AB 1234 (Pescetti)** Production and transmission of public utility commodities and services: natural gas.

**As Amended June 19, 2002**

**Recommendation:** Support

**Summary:** This bill permits nonutility gas producers to acquire and hold easements upon real property to accommodate their facilities upon a finding by the California Public Utilities (Commission) that is in the public interest.

**Analysis:** Facilities for the transport of natural gas cross real estate owned by others to facilitate delivery to endusers. IN California the vast majority of the delivery facilities and the easements are owned by public utilities, for whom there is a presumption that acquisition and ownership of the easement is for a public purpose.

Since 1989 the Commission and the Legislature have anticipated that gas producers in California may acquire gas transportation facilities without becoming regulated utilities. The acquisitions may include acquiring utility facilities currently used to serve them. The acquisition of the facilities without the easements, however, will frustrate such transactions.

Under old case law, transfer of a utility easement to a nonutility entity may be impermissible or otherwise legally risky. In 1997 the Legislature provided for the acquisition by nonprofit gas producer cooperatives of utility easements, notwithstanding earlier judicial pronouncements (AB 313 (Thomson) amending PU Code §3126).

This bill provides similar legal certainty to acquisitions of utility easements by entities other than not-for-profit gas producer cooperatives. Transfers of real property of this

sort would require a decision under PU Code Section 851 that the transfer is in the public interest. The bill explicitly provides for such a finding.

One of the reasons for legal uncertainty in these transfers is that the transfer by the utility owner to the gas producer transferee may or may not have the approval of the landowner. The Commission public interest finding will address this problem and the bill provides for notice to affected landowners prior to commencement of the proceeding so that due process is observed.

## **SUPPORT/OPPOSITION**

**Support:** California Independent Petroleum Association (CIPA)

**Opposition:** None reported to the Commission.

## **LEGISLATIVE STAFF CONTACT**

Bill Julian, Legislative Director  
CPUC-OGA

[bj2@cpuc.ca.gov](mailto:bj2@cpuc.ca.gov)  
(916) 327-1407

**Date:** August 2, 2002

BJ:cdl

**BILL LANGUAGE:**

BILL NUMBER: AB 1234    AMENDED  
BILL TEXT

AMENDED IN SENATE    JUNE 19, 2002  
AMENDED IN SENATE    JULY 5, 2001  
AMENDED IN ASSEMBLY    MAY 3, 2001

INTRODUCED BY    Assembly Member Pescetti

FEBRUARY 23, 2001

An act to ~~add Sections 857 and 857.1 to~~  
add Chapter 2 (commencing with Section 3250) to Part 4 of, Division  
1, of the Public Utilities Code, relating to ~~public~~  
~~utilities~~ natural gas .

LEGISLATIVE COUNSEL'S DIGEST

AB 1234, as amended, Pescetti. ~~Public utilities~~  
Production and transmission of public utility  
commodities and services : natural gas.

Existing law permits 3 or more natural persons engaged in the  
production of gas to form a cooperative association for purposes of  
selling gas produced by the association's members and performing  
other specified related functions. Existing law permits an  
association to acquire a real property easement from a public utility  
for the purpose of accommodating the association's gas plant, and  
provides that the easement shall be deemed to be held for a public  
purpose by the association, provided that the Public Utilities  
Commission finds that the use by the association is in the public  
interest.

This bill would permit an individual, partnership, limited  
liability company, or corporation (person) that is involved in the  
production of natural gas, to exercise all privileges of ownership of  
real or personal property as may be necessary or convenient for the  
conduct and operation of, or incidental to, transmission of natural  
gas and to acquire a real property easement from a public utility for  
the purpose of accommodating the person's gas plant, and provides  
that the easement shall be deemed to be held for a public purpose by  
the person, provided the Public Utilities Commission finds that the  
use by the person is in the public interest.

~~—(1) Under existing law, no public utility may transfer or encumber  
in whole or in part any property necessary or useful in the  
performance of its duties to the public without prior authorization  
from the Public Utilities Commission.~~

~~—This bill would require the commission to require any gas  
corporation that has entered into a specified settlement agreement  
adopted by the commission, to put its historical gas gathering  
system, as defined, to auction not later than April 30, 2002. The  
bill would require the gas corporation to file a complete inventory  
of specified assets not later than February 28, 2002. The bill would  
require the commission to establish minimum terms and conditions  
applicable to the auction. The bill would require that the terms and  
conditions of any sale conducted pursuant to these provisions~~

~~between an eligible bidder, as defined, and a gas corporation, be filed with the commission. Because a violation of the Public Utilities Act and a violation of an order by the commission are crimes under existing provisions of law, the bill would create a state-mandated local program by expanding the definition of a crime.~~

~~—(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~—This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: ~~yes~~ no .

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. ~~Section 857 is added to the Public Utilities Code~~ The Legislature finds and declares that it is the intent of the Legislature to encourage the increased production of natural gas within the state. It is the further intent of the Legislature to encourage the private ownership, maintenance, and operation of natural gas pipelines operated for the sole purpose of gathering natural gas from producing wells, as a means to facilitate the increased production of natural gas production in the state.

SEC. 2. Chapter 2 (commencing with Section 3250) is added to Part 4 of Division 1 of the Public Utilities Code, to read:

CHAPTER 1. GAS PRODUCER ACQUISITION OF EASEMENT RIGHTS  
Article 1. Definitions

3150. Unless the context otherwise requires, the definitions in this article govern the construction of this chapter.

3151. "Person" means an individual, partnership, limited liability company, or corporation, but does not include an association, as defined in Section 3002.

3152. "Natural gas" means all gas produced in this state, natural or manufactured, except propane, for light, heat, or power.

Article 2. Acquisition of Easement Rights

3155. A person involved in the production of natural gas may buy, hold, and exercise all privileges of ownership of real or personal property as may be necessary or convenient for the conduct and operation of, or incidental to, transmission of natural gas. Without limiting the foregoing, a person involved in the production of natural gas may acquire a real property easement from a public utility for the purpose of accommodating the person's gas plant, and the easement shall be deemed to be held for a public purpose by the person, provided that the commission finds that the use by the person is in the public interest. ~~—, to read:—~~

~~—857. (a) The commission shall require any gas corporation that has entered into a settlement agreement adopted by the commission in Decision 97-08-055, to put its historical gas gathering system to auction not later than April 30, 2002. For the purposes of this section and Section 857.1, a "historical gas gathering system" means~~

~~any system listed on a utility's asset inventory and classified as a gathering system prior to 1989.~~

~~—(b) Not later than February 28, 2002, any gas corporation ordered to put its historical gas gathering systems to auction pursuant to subdivision (a), shall be required to file with the commission a complete inventory of its historical gas gathering system. The inventory shall include a report on the current condition and status of all assets defined.~~

~~—(1) This information shall be kept on file with both the utility and the commission and made available to any interested party upon request.~~

~~—(2) Not later than 30 days from the date of enactment of this section, the utility shall be required to develop and maintain a list of all eligible bidders.~~

~~—(c) Not later than 60 days from the date of submission of an inventory pursuant to subdivision (b), the commission shall determine which lines, if any, must be excluded from the auction for purposes of maintaining gas service to existing customers. All other lines shall be put to auction immediately following the 60 day period provided in this section.~~

~~—(d) Concurrent with the time periods provided in this section, the commission shall establish minimum terms and conditions under which each auction will be conducted prior to April 30, 2002.~~

~~—(e) An "eligible bidder" under this section means:~~

~~—(1) Any natural gas producer that has a direct production interest, mineral interest, or is a mineral leasee in the field in which the gathering system is located or serves.~~

~~—(2) Any cooperative of producers that has a direct production interest, mineral interest, or is a mineral leasee in the field in which the gathering system is located or serves.~~

~~—(f) Not later than seven days from the date the gas corporation receives an initial bid from an eligible bidder for any section of a gathering system pipeline, the gas corporation shall be required to do all of the following:~~

~~—(1) File a notice of the pending bid with the commission.~~

~~—(2) Notify all eligible bidders recorded on file by mail of the pending bid.~~

~~—(g) All bidding processes conducted under this section shall be kept open for a period of 60 calendar days commencing with the receipt of an initial bid. The bidding process may not exceed a period of 60 days unless otherwise agreed to jointly by the utility and the party that submitted the initial bid. The gas corporation shall consider all bids submitted by an eligible bidder.~~

~~—(h) Upon expiration of the 60 day open bidding process, the utility shall enter into a sales contract with the eligible bidder that submitted the highest bid. All sales transactions conducted pursuant to this section shall be completed and filed with the commission not later than 21 days from the close of the open bidding process.~~

~~—(i) The terms and conditions of any sale conducted under this section shall be filed with the commission.~~

~~—(1) All terms and conditions of sale under this section shall be deemed reasonable by the commission. The commission shall review all transactions conducted under this section not later than 30 days from the date the sale closed between the purchaser and the utility.~~

~~—(2) All sales conducted under this section shall reflect the best market value for the asset and be consistent with the terms and conditions established under subdivision (d).~~

~~—(3) All gathering systems sold pursuant to this section shall~~

~~include the transfer from the gas corporation to the purchaser of all easements and rights of way associated with the gathering system being sold.~~

~~—(j) Under the terms and conditions of any sale conducted under this section, the utility shall retain all historical environmental liability associated with the line prior to its sale. Upon completion of the sale, the purchaser shall assume all future environmental liability. Environmental or hazardous conditions resulting from the utility's historical ownership of the system and requiring mitigation shall be funded through the utility's existing hazardous waste fund.~~

~~—(k) (1) All pipeline assets sold pursuant to this section shall be governed by common carrier principles. Gathering system owners shall be authorized to assess users rates on producers with nonownership interests. All rates assessed under this section shall be market based and reflect the actual purchase cost of the line, as well as the actual operational costs of the line.~~

~~—(2) All transport rates entered into under this section shall be filed with the commission.~~

~~—(l) Gas corporations affected by this section may not be required to offer for sale any eligible gathering system after December 31, 2003.~~

~~—(1) Any eligible system that does not receive a bid on or before December 31, 2002, shall remain the sole property of the gas corporation in question.~~

~~—(2) Any gas corporation affected by this act shall be authorized to continue to maintain, operate, or retire any gathering system remaining in its inventory after December 31, 2002, subject to all applicable commission rules and regulations.~~

~~SEC. 2. Section 857.1 is added to the Public Utilities Code, to read:~~

~~—857.1. Gas corporations operating in California shall be required to provide connections to their backbone system for any new proposed gathering system seeking a connection. Requests for a connection shall be filed with the commission, and reviewed and processed by the gas corporation not later than 60 days from the date of receipt of the request.~~

~~SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.~~